IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 6932 of 1995

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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TULSIBHAI @ MOHANBHAI KHIMAJI MARWADI - Appellant(s)
Versus
CHARANKAUR ARJANSING & 2 - Defendant(s)

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Appearance :
MR BHARAT JANI for Appellant(s) : 1,
None for Defendant(s) : 1 - 2.
MS SONAL D VYAS for Defendant(s) : 3,

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 13/10/2006

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

1. The appellant-Tulsibhai @ Mohanbhai Khimji Marwadi filed claim petition i.e. M.A.C.Petition No.416 of 1993 before the Motor Accident Claims Tribunal No.3 at Ahmedabad (for short “the Tribunal”) and claimed compensation of Rs.3-00 lacs in all. However, the learned Tribunal by its impugned judgment and award dated 28th August, 1995 partly allowed the claim petition and awarded only Rs.95,000/- with interest at the rate of 12 % per annum from the date of application till realisation with proportionate cost. The opponent No.3-Insurance Co. was directed to deposit the aforesaid amount before the Tribunal within three months. Out of the aforesaid amount, Rs.50,000/- was ordered to be invested in Fixed Deposit by opening Fixed Deposit Account in any nationalised bank of his choice with a direction that for a period of 5 years the claimant will not be entitled to withdraw the same or raise any loan on it without permission of the Tribunal.

2. Aggrieved by the aforesaid judgment and award passed by the learned Tribunal, the appellant-

claimant has filed the present appeal restricting his claim to Rs.1,30,000/- in this appeal. Thus, in all he has claimed Rs.2,25,000/- instead of Rs.3-00 lacs claimed by him before the Tribunal.

3. The appellant, Tulsibhai @ Mohanbhai Khimji Marwadi, met with a vehicular accident on 18-2-93, at about 1-00 p.m., when he was pulling his handcart on the road going from Kalupur to Naroda of Ahmedabad. He was run over by the driver of Truck No.GRT 4695. In the accident which occurred because of the rash and negligent driving of the driver of the truck, he lost his right leg which was amputated below the knee in the hospital. Therefore, he filed M.A.C.Petition No.416 of 1993 before the Motor Accident Claims Tribunal No.3, at Ahmedabad, claiming compensation of Rs.3 lacs in all. In the claim petition he claimed that he was aged 35 years at the time of accident and was earning Rs.80/- per day. He was totally illiterate.

After the accident, he was admitted in the hospital on 18-2-93 and discharged after a period of almost one month on 14-3-93. Dr. Maniar, Exh.22, stated that right leg of the appellant was amputated below the knee and skin grafting was done on 6-3-93. He assessed permanent disability of 45 % of the limb.

4. The learned Tribunal was of the opinion that during 1993 minimum wages could have been Rs.50/- per day even for unskilled labourer. Therefore, it would be just and proper to assess the income of the victim at Rs.1,200/- to Rs.1,500/- per month. Though the claimant had stated that after the accident he was not in a position to work at all and lost all means of his livelihood. The learned Tribunal came to the conclusion that his income was affected to the extent of 33 %. In view of the evidence of Dr. Maniar 45 % permanent disability could be assessed. Thus, taking monthly loss of Rs.500/-, his

loss of income was considered at Rs.1,600/- per year and taking the age of the claimant at 35 years, applying multiplier of 12 years, the learned Tribunal awarded only Rs.72,000/- for the loss of income to the appellant. In addition to it, Rs.5,000/- more was awarded for medicines and other medical expenses. Considering the fact that after the accident the claimant had to remain in the hospital for a period of about one month. Therefore, for pain, shock and suffering, only Rs.15,000/- is awarded. During the period of one month, his wife attended him in the hospital. She was also labourer. Therefore, for personal attendance Rs.1,000/- was awarded, for good diet and conveyance charges Rs.2000/- was awarded. Thus, in all Rs.95,000/- was awarded against the claim of Rs.3 lacs, by the learned Tribunal by its impugned judgment and award dated 28-8-95. Hence, this appeal. However, in this appeal the claim is restricted to Rs.1,30,000/-

more. In the instant case, it is an admitted position that the appellant-claimant had lost his right leg in the accident. It is amputated below the knee. He is an illiterate person and was earning his livelihood by pulling hand-cart. Therefore, though according to the doctor in medical term it would be 45 % permanent disability, in fact, it would be almost 1000 % disability for the appellant-claimant. It is no doubt true that with the help of artificial limb he would be in a position at least to walk, but in any case, he would not be in a position to pull heavy load in the hand-cart. Thus, therefore, the learned Tribunal was wholly in error in coming to the conclusion that his income would be affected to the extent of 33%. While considering the loss of monthly income of Rs.500/- the learned Tribunal has committed grave error. The Tribunal considered the income of the claimant at Rs.1,500/- per month without considering the future rise in

the income, he deducted 33 % though the doctor said 45 % permanent disability. In our considered opinion, his income should have been considered at Rs.2,500/- per month and deducting 45 %, it would come to Rs.1,125/-. Thus, the monthly loss of income would be Rs.1,125/-, which comes to Rs.13,500/- per year. The learned Tribunal applied 12 years multiplier though the age of the claimant was 35 years at the time of accident. In the recent Supreme Court judgment, the Supreme Court has held that at least multiplier of 13 should have been applied. Therefore, applying multiplier of 13, it would come to Rs.1,75,500/-. Accordingly we award Rs.1,75,500/- towards future loss of income against Rs.72,000/- awarded by the Tribunal.

5. Though the appellant-claimant lost his right leg in the accident which was amputated below the knee, he was awarded only Rs.15,000/- by way of pain, shock and suffering, which is too less. In our considered opinion, the

claimant would be entitled for Rs.40,000/- on this head as he had remained in the hospital from 18-2-93 to 14-3-93 for a period of almost one month. He was present in the Court and even today he is walking on clutches and not able to use false limb. Accordingly, we award Rs.40,000/- for pain, shock and suffering.

The learned Tribunal has awarded Rs.5,000/- for medicines etc. We maintain the said amount.

The learned Tribunal has awarded Rs.2,000/- for special diet and conveyance charges. We maintain the same. However, the learned Tribunal has awarded only Rs.1,000/- for attendant charges. The very fact that the wife of the claimant was also labourer had to stay with her husband for almost one month in the hospital and thereafter at the home for a considerable time, Rs.2,500/- should have been awarded towards attendant charges and accordingly instead of Rs.1,000/-

we award Rs.2,500/- for attendant charges. Thus, the total comes to Rs.2,25,000/-. Compensation of Rs.95,000/- is already awarded by the Tribunal in the claim petition. Therefore, the claimant would be entitled for additional amount of Rs.1,30,000/- in this appeal.

6. Accordingly, this appeal is fully allowed and the respondents are directed to pay the additional amount of Rs.1,30,000/- (Rupees One Lakh Thirty Thousand Only) in this appeal to the claimant to gether with interest at the rate of 9 % from the date of the application till the payment and to pay proportionate cost to the appellant.

7. Respondent No.3-United India Assurance Co. Ltd. is directed to deposit the aforesaid additional amount of Rs.1,30,000/- together with interest and cost as awarded hereinabove before the learned Tribunal within three months from today. On depositing the said

amount, the learned Tribunal shall pay Rs.25,000/- to the appellant-claimant-Shri Tulsibhai alias Mohanbhai Khimaji Marwadi by way of A/c payee cheque, drawn in his name. Rest of the amount shall be deposited in Fixed Deposit for a period of 5 years at first instance in any nationalized bank nearby the area where the appellant is residing and he shall be paid quarterly interest on it. During the period of 5 years, the appellant shall not be entitled to withdraw the said amount or raise any loan on it without prior permission of the Tribunal. Looking to the condition of the appellant-claimant, the learned Tribunal on its own shall decide whether the Fixed Deposit be renewed for further 5 years or not. If the Tribunal is satisfied that the appellant-claimant is in a position to take care of himself, then as desired by him, the amount be paid to him. Ms. Daksha Dalal, who has conducted the case of the appellant before

the Tribunal is present before the Court and stated that she may look after the best interest of the appellant-claimant and she will see to it that the amount paid to him by the Tribunal at first instance and the amount of interest is not misused by others.

8. The appeal is allowed accordingly with costs.

(B.J.SHETHNA,J.)

(M.D.SHAH,J.)

*mithabhai